

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NICOLE DEL VECCHIO, *et al.*,

Plaintiffs,

v.

AMAZON.COM, INC.,

Defendant.

Case No. C11-366RSL

ORDER GRANTING DEFENDANT'S  
MOTION FOR PROTECTIVE ORDER

This matter comes before the Court on Defendant's "Motion for Protective Order" (Dkt. # 76). It asks the Court to enter an order precluding it from having to comply with Plaintiffs' request for production of "all documents concerning Amazon's P3P Compact Policy and any modifications made to the same." The Court GRANTS the request.

The question in this case is not one of general relevance. Instead, as both parties acknowledge, it is a question of whether Plaintiffs' request falls within the narrow bounds of the limited discovery authorized by the Court. See Dkt. # 72. A brief tracing of the history of this case makes clear that it is not. Plaintiffs filed their original complaint in March 2011. Dkt. # 1. In it, they asserted various claims against Defendant, each related to Defendant's alleged placement of "cookies" on their computers without their knowledge or consent. Id. And in response to Defendant's subsequent motion to dismiss (and in order to distinguish governing case law), Plaintiffs clarified their position, stating: "Plaintiffs . . . do not allege that misstatements and omissions in Amazon's Privacy Notice and Terms of Use caused them injury. Instead, Plaintiffs allege that Amazon's

1 deceptive conduct occurred before plaintiffs could ever read Amazon's Privacy Notice  
2 and its Terms of Use." Dkt. # 52 at 35–36 (emphasis omitted) (distinguishing Minnick v.  
3 Clearwire US, LLC, 683 F. Supp. 2d 1179, 1188 (W.D. Wash. 2010), wherein the "court  
4 dismissed false-advertising claims under [Washington's Consumer Protection Act  
5 ("CPA")] because plaintiffs' allegations were conclusory, contradicted by defendants'  
6 website disclosures, and plaintiffs failed to allege that they viewed any statements in  
7 issue" (emphasis added)).

8 In its ensuing Order, the Court noted the frailty of that argument. The CPA  
9 requires a specific showing of injury to business or property to state a claim. Hangman  
10 Ridge Training Stables, Inc., v. Safeco Title Ins. Co., 105 Wn.2d 778, 792 (1986). And,  
11 under Plaintiffs' own theory, their injury stemmed from Defendant's obtainment of  
12 information related to their use of Defendant's site. See Dkt. # 58 at 9. Accordingly, the  
13 Court dismissed their claim. Id. at 9–10.

14 Plaintiffs filed an amended complaint shortly thereafter. Dkt. # 61. And, again,  
15 Defendant promptly filed a motion to dismiss each of Plaintiffs' claims. Dkt. # 62. As to  
16 two of Plaintiffs' claims, the Court agreed with Defendant. E.g., Dkt. # 72 at 16–17. It  
17 found that Plaintiffs had not plausibly alleged that they suffered any loss to the value of  
18 their information or any loss of computer assets, noting, "Not one Plaintiff alleges that he  
19 or she experienced any noticeable difference in his or her computer's performance  
20 traceable to Defendant's actions." Dkt. # 72 at 7–8. And finding that Plaintiffs had failed  
21 to make sufficient allegations after multiple attempts and warnings, the Court dismissed  
22 those two claims with prejudice.

23 As to Plaintiff's remaining CPA and unjust enrichment claims, the Court found the  
24 issue of authorization dispositive and noted that "Defendant's 'Conditions of Use and  
25 Privacy Notice' appear to notify visitors that it will take the very actions about which  
26 Plaintiffs now complain: place browser and Flash cookies on their computers and use  
those cookies to monitor and collect information about their navigation and shopping

1 habits.” Id. at 12. Nevertheless, in deference to Plaintiffs’ argument that “Amazon’s  
2 disclosures, even if they accurately depicted Amazon’s activities, are not prominent  
3 enough to put a reasonable user on notice of them,” Dkt. # 67 at 13–14 (emphasis added),  
4 the Court agreed to allow Plaintiffs the opportunity to conduct “[l]imited discovery  
5 concerning Defendant’s conditions and notice, their location on Defendant’s site, and  
6 each Plaintiffs’ use of Defendant’s site.” Dkt. # 72 at 10–13.

7 Plainly, Plaintiffs’ request falls outside the scope of that limited  
8 opportunity. The Court authorized discovery concerning Plaintiffs’ objection to  
9 Defendant’s notice and conditions, not its Compact Policy. The reason is simple:  
10 the Court has already found that Plaintiffs failed to allege sufficient facts to state a  
11 plausible case of injury on account of injury to their computer assets. Dkt. # 72 at  
12 7–8. Accordingly, the only basis of possible CPA “injury” left is their allegations  
13 regarding their private information. And, as also already discussed, this loss is not  
14 attributable to Plaintiffs visiting of Defendant’s site, it is attributable to their use of  
15 its site—a reality Plaintiffs had previously acknowledged. See id. at 12 n.9  
16 (“Given the issue of causation identified by the Court in its previous Order,  
17 Plaintiffs appear to have abandoned their contention that their injury occurred as  
18 soon as they navigated to Defendant’s site and cookies were transferred to their  
19 computer.”). The Court will not permit Plaintiffs to avoid the natural implications  
20 of their own arguments. Their claim is dependant on the applicability of  
21 Defendant’s notice and conditions and thus, as the Court previously ordered,  
22 discovery is limited at this time to that issue.

23 For all of the foregoing reasons, the Court GRANTS Defendant’s motion.

24 DATED this 4th day of September, 2012.

25 

26 Robert S. Lasnik  
United States District Judge